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E-FILED December 4, 2023

5 **UNITED STATES BANKRUPTCY COURT**

6 **DISTRICT OF NEVADA**

7 In Re.
8 DONALD SCOTT HERMAN
9 Debtors.

Chapter 13 Proceedings
CASE NO: 23-14385-mkn

11 DONALD SCOTT HERMAN, GRASS
12 VALLEY HOLDINGS, LLP.. a Limited
13 Liability Partnership,

14 Plaintiffs,

15 vs.

16 SERVIS ONE, INC., d/b/a/ BSI
17 FINANCIAL SERVICES, a Corporation;
18 MTC FINANCIAL INC., d/b/a TRUSTEE
19 CORPS., a Corporation; MORGAN
20 STANLEY DEAN WITTER CREDIT
21 CORPORATION, a Corporation; and
22 EAGLE NEST TRUST #10530, TRINITY
23 CAPITAL LLC., a Limited Liability
24 Company.

25 Defendants.

26 **ADVERSARY COMPLAINT**

27 COMES NOW, Debtor DONALD SCOTT HERMAN by and though their attorney of record
28 Michael J. Harker, Esq., and hereby submits the underlying ADVERSARY COMPLAINT in order to
reimpose the automatic stay as follows.

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INTRODUCTION

- 3 1. This is an action brought by the Plaintiff for a Declaratory Judgment, injunctive and
- 4 equitable relief as provided for by Rules 2016(a), 3007, 7001(7) and 7001(9) of the
- 5 Federal Rules Bankruptcy Procedure.
- 6 2. The Plaintiff seek injunctive relief under 11 U.S.C. 105(a).

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JURISDICTION AND VENUE

- 9 3. Jurisdiction of this Court arises under 28 U.S.C. § 1334. This proceeding is a core
- 10 proceeding and jurisdiction is further proper pursuant to 28 U.S.C. § 157(b)(2). To the
- 11 extent applicable, Plaintiff consents to the entry of final order(s) and judgment(s) by
- 12 this Court on any non-core claims.
- 13 4. Venue in this Court is proper pursuant to 28 U.S.C. § 1409(a) because the bankruptcy
- 14 case to which this action relates is pending before this Court in this District.

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PARTIES

- 16 5. Plaintiff DONALD SCOTT HERMAN is the Debtor in the underlying bankruptcy
- 17 and owners of real property located at 10530 Eagle Nest Street, Las Vegas, NV
- 18 89141, Las Vegas, NV 89101 ("Subject Property") and has resided in said property
- 19 since 2012 GRASS VALLEY HOLDINGS LLP., is the Owner of the property and
- 20 DONALD SCOTT HERMAN is 100% owner of GRASS VALLEY HOLDINGS,
- 21 LLP.
- 22 6. That upon information and belief, Defendant SERVIS ONE, INC., d/b/a/ BSI
- 23 FINANCIAL SERVICES is the Servicer for Defendant MTC FINANCIAL INC.,
- 24 d/b/a TRUSTEE CORPS., on the property in question.
- 25 7. That MORGAN STANLEY DEAN WITTER CREDIT CORPORATION is the
- 26 underlying Lender which purportedly holds the Note secured by the Deed of Trust on
- 27 the property in question.

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8. That MTC FINANCIAL INC., d/b/a TRUSTEE CORPS., is the Trustee that was conducting the foreclosure sale on behalf of the above referenced Defendants.
9. That EAGLE NEST TRUST #10530, TRINITY CAPITAL LLC., is the purported purchaser of the property in question and a foreclosure sale wrongfully conducted and as more fully set below.
10. Upon information and belief, Defendant is and was at all times continues to be the mortgagee of the Subject Property holding a note secured by a Deed of Trust on said property pursuant to a document recorded in 2012 with the Clark County recorders Office.

CAUSE OF ACTION

11. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them by reference.
12. That Plaintiff GRASS VALLEY HOLDINGS LLP., is the legal owner of the property in question and is owned 100% by Plaintiff DONALD SCOTT HERMAN.
13. That GRASS VALLEY HOLDINGS LLP., has been the owner of said property since 2014.
14. That specifically, Plaintiff DONALD SCOTT HERMAN owned the property in his Trust.
15. That the Borrower was JENNIFER HALTEMAN who was fore a time, the significant other of the Plaintiff herein.
16. That JENNIFER HALTEMAN sold the property to Plaintiff DONALD SCOTT HERMAN who placed it in his Trust and ultimately transferred it to GRASS VALLEY HOLDINGS LLP.
17. That Defendant MORGAN STANLEY DEAN WITTER CREDIT CORPORATION has been the holder of the promissory Note in question.

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1 30. That within said bankruptcy, the Defendant SERVIS ONE INC., filed a Proof of
2 Claim (Claim #9-1) alleging that the Debtor owed secured creditor monies in
3 question.

4 31. That once again, this established that secured creditor was very well aware that
5 DONALD SCOTT HERMAN had a claim to the property and had been making
6 payments on the property.

7 32. That DONALD SCOTT HERMAN filed the underlying bankruptcy and the two
8 payments that had been made in the previous bankruptcy were placed in the
9 underlying bankruptcy.

10 33. That there is currently \$3,200.00 in payments in the underlying bankruptcy.

11 34. That notwithstanding the same, the underlying bankruptcy was filed on or about
12 October 5, 2023 one day before the foreclosure sale.

13 35. That the Notice of the bankruptcy was sent to both Nevada Legal News and to
14 MTC FINANCIAL INC., d/b/a TRUSTEE CORPS.

15 36. That notwithstanding the same, and having been 100% aware that DONALD SCOTT
16 HERMAN had filed the bankruptcy, the foreclosure occurred.

17 37. That within DONALD SCOTT HERMAN's Schedules in both the previous
18 bankruptcy and the bankruptcy that was currently filed, DONALD SCOTT HERMAN
19 listed himself as 100% owner of GRASS VALLEY HOLDINGS LLP., and alleged an
20 interest in the property in question.

21 38. That the Schedules in both bankruptcies showed his interest in the property.

22 39. That indeed, the previous bankruptcy was filed to also stop the foreclosure sale and
23 the Defendants stayed any and all foreclosure proceedings.

24 40. That said Defendants were very much aware of the stay as a result of DONALD
25 SCOTT HERMAN'S bankruptcies and stayed the foreclosure in the previous
26 bankruptcy and filed a Proof of Claim.

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FIRST CAUSE OF ACTION (Injunctive Relief)

15 46. That Plaintiff realleges and reaffirms the allegations set forth in paragraphs 1 through
16 45 and further alleges as follows.

17 47. That clearly the automatic stay applied to the foreclosure when DONALD SCOTT
18 HERMAN individually filed the bankruptcy and represented his ownership interest in
19 the property and the fact that he resided in the property in question.

20 48. That as set forth above, GRASS VALLEY HOLDINGS, LLP., is the owner of the
21 property which is solely owned by DONALD SCOTT HERMAN both of which is
22 disclosed in the Schedules and Statements in both bankruptcies.

23 49. That the Defendant was very well aware of DONALD SCOTT HERMAN interest by
24 actually accepting payments from him, sending notices to him and actually sending
25 statements to him.

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1 50. That additionally, as set forth above, in the previous bankruptcy, Defendant filed a
2 Proof of Claim acknowledging DONALD SCOTT HERMANS interest in the
3 property.

4 51. That Plaintiff has a reasonable probability of success son the merits of the case for
5 which compensatory damages are not available and Plaintiff is requesting that the
6 Court enjoin any eviction proceedings and set aside the foreclosure which occurred
7 in violation of the automatic stay.

8 52. That Plaintiff has been required to retain the services of Michael J. Harker, Esq., a
9 duly licensed attorney and is entitled to recover reasonable attorneys fees for having
10 brought the underlying action.

**.SECOND CAUSE OF ACTION
(Sanctions for Violation of the Automatic Stay)**

12 53. That Plaintiff realleges and reaffirms the allegations set forth in paragraphs 1 through
13 52 and further alleges as follows.
14 54. That Plaintiff is furthermore requesting that the Court issue sanctions against
15 Defendants and each of them for violation of the automatic stay by willfully and
16 knowingly foreclosing on the property in question.
17 55. That DONALD SCOTT HERMAN who is 100% owner of GRASS VALLEY
18 HOLDINGS LLP., filed the bankruptcy to stop the foreclosure sale.
19 56. That Plaintiff has had to take numerous trips to the hospital and has been threatened
20 with eviction.
21 57. That Plaintiff is requesting damages in the amount of \$25,000.00.
22 58. That Plaintiff is furthermore requesting punitive damages in an amount in excess of
23 \$25,000.00.
24 59. That Plaintiff has been required to retain the services of Michael J. Harker, Esq., a
25 duly licensed attorney and is entitled to recover reasonable attorneys fees for having
26 brought the underlying action.

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PRAYER FOR RELIEF
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5 Wherefore, Plaintiff prays that this Court grant the following relief:
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- 8 1. An injunction under 11 U.S.C. 105(a) that enjoins the Defendant from foreclosing
9 upon the subject property:
- 10 2. For declaratory relief finding that Defendant Plaintiff GRASS VALLEY HOLDINGS
11 LLP., is the owner of the property and that DONALD SCOTT HERMAN properly
12 filed the bankruptcy disallowing the foreclosure of the property disallowing the sale.
- 13 3. For damages in the amount of \$25,00.000
- 14 4. For punitive damages in an amount of \$25,000.00
- 15 5. Any and all other relief to which Plaintiff may be entitled.

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18 RESPECTFULLY SUBMITTED this 4th day of December, 2023.
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Law Office of Michael J. Harker, Esq.

By /s/ Michael J. Harker
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DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK) SS

DONALD SCOTT HERMAN, being first duly sworn, depose and say: That Declarant is the Debtor/Plaintiff in the above-entitled action; that Declarant has read the foregoing ADVERSARY COMPLAINT, know the contents thereof, and that the same is true except for those statements made upon information and belief and as to those matters Declarant believes them to be true.

/s/ Donald Scott Herman
DONALD SCOTT HERMAN

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